ORG. FILE 8-21
CARRIER'S FILES 2757, 2758, 2783, 2809, 2820, 2821, 2871, 2872, 3026
NRAB FILE - NONE

AWARD NO. 24
CASE NO. 24

SPECIAL BOARD OF ADJUSTMENT NO. 194

PARTIES TO DISPUTE: The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the currently effective agreement between the parties when on February 28, March 14, March 29, April 11, April 20, May 1, June 13, and August 15, 1956, it failed and refused to call available, qualified extra employes to fill vacancies on regularly established positions on the 7th Street platform at St. Louis, Missouri.

(2) Levi Grayson now be allowed one day's pro rata pay at the stowman rate for February 28, 1956.

(3) Andrew Robinson now be allowed one day's pro rata pay at the stowman rate for March 14, 1956.

(4) Thomas Burgan now be allowed one day's pro rata pay at the stowman rate for March 29, 1956.

(5) Beatrice Allen now be allowed one day's pro rata pay at the stowman rate for April 11, 1956.

(6) Levi Grayson now be allowed one day's pro rata pay at the Picker's rate for April 20, 1956.

(7) Levi Grayson now be allowed one day's pro rata pay at the stowman's rate for May 1, 1956.

(8) Thomas Burgan and Levi Grayson each be allowed one day's pro rata pay at the rate of the stowman position for June 13, 1956.

(9) Thomas Burgan now be allowed one day pro rata pay at stowman's rate for August 15, 1956.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

The Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

There were about 40 regular established Group 3 Laborer positions at Seventh Street Freight Station. The number of regular positions established was designed to take care of the estimated normal volume of business. Increases in the volume of business from day to day were handled by resort to an extra list; thus, on February 28, 1956, the first day under claim, 46 regular and 10 extra positions were worked. This is a fair specimen of the manner in which the fluctuating volume of business was handled at Seventh Street.

During the period under claim, on the dates specified in Items 2, 3, 5, 7 and 8 of the claim, the occupants of regular assigned positions laid off of their own accord; and the Carrier failed to fill the vacancies. On the dates specified in Items 4, 6 and of the claim, the occupants of regular assigned positions likewise laid off of their own accord; regular employes were permitted under Rule 22 (a) to move up to fill the vacancies; but the Carrier failed to fill the vacancies so created.

All of the vacancies were known to be "short vacancies" within the meaning of Rule 13 and so could be filled without bulletining.

The claim presents the question whether the Agreement required the Carrier to fill these short vacancies.

Rule 10 provides:

> "except as provided in Rule 13, new positions or vacancies shall be promptly bulletined . . ."

Rule 13 provides:

> "New positions or vacancies of thirty calendar days or less duration shall be considered short vacancies and may be filled without bulletining . . ."

Rule 21 (c) provides:

> "When forces are increased or vacancies occur, employes on the extra list shall be returned and required to return to service in the order of their seniority rights except as otherwise provided in this rule. Such employes, when available, shall be given preference on seniority basis to all extra or temporary work, short vacancies and/or vacancies occasioned by the filling of positions pending assignment by bulletin which are not filled by re-arrangement of regular forces . . ."

First. As the Agreement stood prior to 1946, Award 1633 on this property held that the Rules were permissive only and that no Rule made it mandatory upon the Carrier to fill short vacancies.

Award 1633 should control the disposition of these claims unless the changes in the language of the Rules effected by by 1946 Agreement require a sustaining award.

Second. The changes in the Rules, as well as the Organization's proposals for amendment, are before us.

Although the Organization proposed the use of the mandatory word "will" instead of the permissive word "may" in Rule 13, the proposal was not adopted; and, therefore, both before and after 1946, Rule 13 provides that short vacancies "may" be filled without bulletining.

Rule 21 (c) was rearranged and rewritten but, both before and after 1946, both versions of the Rule contain the mandatory word "shall." The substance of the Rule is that reduced employes "shall resume work" or "shall be returned to service" in the order of their seniority rights. The 1946 Rule says shall be "required to return to service" in addition to shall be "returned to service", but this interpolation has no bearing here because it rather clearly relates to the failure to return to service as a basis for considering an employe out of service (see Award 1313).

Third. It thus appears that the 1946 Agreement effected no substantial changes in the substance of these Rules.

Award 1633 said that Rules 10 and 24 (now Rules 13 and 21 (c)) "must be read together to determine the clear intent of the parties"; and this common canon of interpretation attached importance to the use of the permissive word "may" in Rule 10 (now Rule 13). It was doubtless for this reason that in 1946 the Organization proposed a substitution of the mandatory word "will" for the permissive word "may" in Rule 10 (now Rule 13); and it is, therefore, not without significance that the proposal was not adopted.

It may be that Rule 13 simply qualifies Rule 10, but by the same token the mandatory words "shall be" as used in Rule 21 (c) attach to the full phrase "returned to service in the order of their seniority rights" and not simply to the words "return to service."

In view of all of the foregoing considerations we conclude that the 1946 Agreement has not changed the controlling force of Award 1633.

AWARD

Claim denied.

/s/ Hubert Wyckoff
Chairman

/s/ T. P. Deaton
Carrier Member

I dissent:
/s/ F. H. Wright
Employe Member

Dated at St. Louis, Missouri August 6, 1958